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Human rights situations that require the Council's attention

Written statement* submitted by the Society for Development and Community Empowerment (SDCE), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Self-determination of Tamils and accountability in Sri Lanka

Seven years ago in May 2009, the Sri Lankan military killed more than 90 000 civil in North East of Sri Lanka, but the 2009 victory came at significant human cost. An estimated 300,000 people were displaced. According to the U.N., some 40 000- 70,000 civilians were killed in the first five months of 2009. Families and communities were destroyed beyond recognition. In one survey of the war-torn areas, 80 percent of women were either widowed, unmarried, divorced or living separately from their husbands. Among them, 70 percent were heading households and the majority had no jobs.

The devastation wrought against the civilian population has become the subject of investigative journalism and human rights organizations. In February 2013, Human Rights Watch (HRW) issued "'*We Will Teach You a Lesson': Sexual Violence against Tamils by Sri Lankan Security Forces*," chronicling 75 cases of rape committed by security forces against Tamil women between 2006 and 2012.

The OISL report prepared, without able to visit Sri Lanka, could be able to bring out some of the key violations committed against Tamils are of Genocide in nature. The report identifies the failure of the Sri Lanka as a state and failure of its constitutional institutions including judiciary should be taken seriously and further criminal investigations need to be commissioned at the international level to independently investigate the crime of Genocide of Tamils.

In Sri Lanka, there had been nearly eighteen Commissions of Inquiry from 1963 to 2013 but none could deliver justice. It should be noted that a majority of these commissions were related to crimes against Tamils.

Sri Lanka has long used "Sovereignty" as a defense against international "intervention" and has executed its genocidal plans on Tamils. Even before the emergence of the LTTE, Sri Lanka had committed multiple genocides on Tamils.

The successive Governments from 1948 have adopted anti Tamil stands, The present draft lacks the voice of tamils. The Mythiripala Srisana was leading the government during the final stages of the 2009 war in which nearly 40,000 Tamils were missing. This genocidal war was used as an instrument to wipe-out the sovereignty of Tamils, they earned through their 60 year resistance.

The Tamil homeland is occupied by the Sri Lankan military with ratio of 1 soldier for every 6 Tamils. Whereas Sri Lanka military's composition is 99% Sinhalese. This militarization will not protect victims or witnesses who are predominantly Tamil. It is my duty to remind the forum that the Sri Lankan constitution has not endorsed by Tamils.

So the majority of the Tamil representatives from grass root expressed their demand for international independent investigation for genocide. This demand is emanating from the cycle of violence by the Sri Lankan government from 1948 and their deceptive politics. The present President Mythiribala Sirisena, Prime Minister Ranil Wickeramasinge and proposed Reconciliation commission head and former President Chandrika are all committed heinous crimes against Tamils and can find some of the crimes listed in the OISL.

The perpetrators of the crimes should be investigated and the victims need to be protected by re-establishing their own sovereignty in their homeland.

There cannot be two standards for heinous crimes like crime of genocide.

Exempting Sri Lanka from independent international investigation will only strengthen the structural genocide on Tamils. The international community should come forward to formulate international tribunal to investigate Sri Lanka or refer Sri Lanka to International criminal court similar to Syria.

Events like the above are a few examples that can briefly explain why Sri Lanka does not have the capacity to investigate its own crimes. Like elsewhere let the victims be protected by their own sovereignty to submit their testimony of the crimes committed.

We welcome Secretary General's referral of Syria to ICC. Tamil life is also equally precious that of Syrian innocents. In a similar way let there be an International Criminal Tribunal for Sri Lanka (ICTSL) under U.N. Charter Article 22 to investigate Crime of Genocide of Tamils

No one ought to be a judge in his own cause.

The subsequent Human Rights Council Resolution (A/HRC/30/L.29) - which was co-sponsored by the Sri Lankan Government - reiterated the need to establish a special judicial mechanism to investigate and prosecute "violations and abuses of human rights and violations of international humanitarian law." The Resolution affirmed "the importance of participation in a Sri Lankan judicial mechanism, including the special counsel's office, of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators."

We note with concern the recent statement by President Maithripala Sirisena (BBC interview, 21 January 2016) that he will "never agree to international involvement" and that "we have more than enough specialists, experts and knowledgeable people in our country to solve our internal issues". This statement goes against both the word and spirit of the Resolution. It is also patently incorrect – as clearly outlined in successive reports by independent UN experts, the Sri Lankan justice system does not have the requisite independence, impartiality or expertise to administer fair and effective war crimes prosecutions. The Sri Lanka Government must not be allowed to backtrack on its commitments or use technical legal excuses to block full international judicial and prosecutorial participation.

If the accountability mechanisms are to "uphold the rule of law and to build confidence in the people of all communities of Sri Lanka" there must be a meaningful consultation process. The victims' voice must be heard. And their views on the need for full participation of foreign judges and prosecutors within the judicial process must be accommodated.

We urge you to insist that the Sri Lankan Government conducts broad consultations with all stakeholders and respects its international commitments by implementing the word and spirit of the Resolution.

Tamil Political Prisoners

The rights of all prisoners in Sri Lanka are regularly violated. However, political prisoners who are Tamil, the largest Political prisoners are Tamils in the country, have been at the receiving end of some of the most severe forms of abuse. Since the conflict between the Sri Lankan government and the LTTE, the separatist militant group, turned into civil war in 1983, tens of thousands of Tamils suspected of links with the LTTE have been arrested and detained in prisons, detention camps and police custody. Several Sinhalese people have been arrested for the same reasons and some of them have also faced abuse and ill treatment.

The Sri Lankan government has denied the routine use of torture in the country, and has refused to investigate the widespread reports of the practice or to hold those suspected to be responsible to account. Sri Lanka should put more effort into actually ending human rights violations and impunity of perpetrators than it does into defending itself against criticism.

We urge the Human Rights Council to:

- Adopt a resolution supporting the implementation of OISL's recommendations aimed at ending impunity, accounting for the past and reforming systems, and ensuring ongoing Human Rights Council engagement including by monitoring the implementation of the OISL report and the human rights situation in Sri Lanka, and providing for regular updates;

- Offer international expertise dedicated to ensuring that allegations identified by OISL of crimes under international law by Sri Lankan government forces, allied armed groups, are promptly, thoroughly and effectively investigated and that those suspected of committing a crime are prosecuted in genuine proceedings that fully conform to international standards for fair trial;

- Offer international expertise dedicated to ensuring that victims of crimes under international law and human rights violations and abuses are provided with other effective remedies, including full reparation and truth.

- Offer to the Tamil people a possibility of a Referendum according The UDHR

We urge on the Government of Sri Lanka to:

- Initiate wide reaching and meaningful public consultation, including with victims and their families, civil society and other stakeholders to understand their needs and expectations regarding truth, justice, full reparation including guarantees of non-recurrence and ensure their full participation in any accountability process;

- Repeal the Prevention of Terrorism Act which allows authorities broad discretion to hold detainees where they choose and to move detainees from place to place while under investigation, and stop using the law until it is repealed.

- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, The Rome Statute of the International Criminal Court, The International Convention for the Protection of All persons from Enforced Disappearances:

We urge Human Rights Council Members and observer states to:

- Support the measures recommended above to the Human Rights Council;
- Offer support for and urge Sri Lanka to accept international cooperation and expertise to end impunity;
- Ensure that assistance provided emphasizes the centrality of victims and their special status in the design and implementation of mechanisms to deliver truth, justice, reparation and non-recurrence of violations.

Collectif La Paix au Sri Lanka and the Swiss Council of Eelam Tamil, NGOs without consultative status, also share the views expressed in this statement.